

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

| | | |
|-------------------------------|---|------------------------|
| William M. Gustavson, et al., | : | |
| | : | |
| Plaintiff(s), | : | |
| | : | Case Number: 1:13cv717 |
| vs. | : | |
| | : | Judge Susan J. Dlott |
| City of Cincinnati, et al., | : | |
| | : | |
| Defendant(s). | : | |

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on January 16, 2015 Report and Recommendation (Doc. 57). Subsequently, the defendant filed objections to such Report and Recommendation (Doc. 58) and plaintiff filed a response to the objections (Doc. 59).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendation should be adopted except for the following two matters.

This Court finds that the City of Cincinnati is the only proper defendant to this lawsuit because the department and boards of the City are *sui juris* and are not capable of suing or being sued. Further, following the same reasoning, Milton Dohoney, the former City Manager, is also not a proper party to the lawsuit. The Court ORDERS that all defendant's except for the City of Cincinnati are dismissed.

The Court also finds that the City's objection that the Report and Recommendation did not consider the effect of plaintiff Michael Hope's irrevocable option to have a 2.25% multiplier is well-taken. This Court finds that Mr. Hope is not similarly situated to all the other plaintiffs because he made an irrevocable option in 1998 to have a 2.25% multiplier (Doc. 44-8 at Page ID 569). Because he made an affirmative, irrevocable choice to have a 2.25% multiplier, he is not similarly situated to the other

plaintiffs, and should not receive a 2.5% multiplier.

Accordingly, plaintiffs motions for summary judgment on liability (Doc. 39 and 41) are **GRANTED, except as noted above.** The City's motion for judgment on the pleadings (Doc. 40) is **DENIED, except as noted above.**

It is further **ORDERED** that this case be REMANDED back to the Magistrate Judge for a hearing on damages.

IT IS SO ORDERED.

s/Susan J. Dlott
Judge Susan J. Dlott
United States District Court